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Products Liability - Manufacturers' Strict Liability for Enhanced Injuries Due to Design Defects. *Badorek v. General Motors Corp.*, 11 Cal. App. 3d 902, 90 Cal. Rptr. 305 (1970)

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Products Liability—MANUFACTURERS' STRICT LIABILITY FOR ENHANCED INJURIES DUE TO DESIGN DEFECTS. *Badorek v. General Motors Corp.*, 11 Cal. App. 3d 902, 90 Cal. Rptr. 305 (1970)

Plaintiff was injured when the car in which she was a passenger was struck from behind. The gas tank ruptured on impact, and the plaintiff suffered additional injuries from flaming gasoline. A California court of appeals affirmed the lower court decision holding General Motors strictly liable in tort for the enhanced injuries caused by the defectively designed gas tank.¹

In early cases, recovery by consumers of defective products was often frustrated by the requirement of privity of contract.² The privity requirement was abolished in the landmark case of *MacPherson v. Buick Motor Co.*³ *MacPherson*, however, continued to couch recovery in terms of a warranty action under sales law. One of the inherent difficulties in applying sales law to consumer transactions was that implied warranties could be disclaimed, thereby continuing to prevent recovery by the consumer for injury sustained in the use of a defective product. The Supreme Court of California recognized this problem in *Greenman v. Yuba Power Products*⁴ and accordingly adopted the doctrine of strict liability in tort, now embodied in the *Restatement (Second) of Torts* § 402A. Since that time, at least twenty jurisdictions have similarly recognized the doctrine of strict liability in tort.⁵

Jurisdictions which employ the doctrine of strict liability in tort where a defect has caused injury divide on cases where an injury has been aggravated, rather than initially caused, by the defect.

In *Evans v. General Motors Corp.*,⁶ the Seventh Circuit Court of Appeals held that an automobile manufacturer was not liable for enhanced injuries caused by design defects.⁷ The court reasoned that an

1. *Badorek v. General Motors Corp.*, 11 Cal. App. 3d 902, 90 Cal. Rptr. 305 (1970).

2. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960) The privity doctrine limited the manufacturer's warranty liability to his immediate purchase. Thus, only a consumer who purchased directly from the manufacturer obtained the benefit of the warranty

3. 217 N.Y. 382, 111 N.E. 1050 (1916). The court in *MacPherson* held that a manufacturer is under a duty to construct a vehicle free from latent defects and that lack of privity of contract is not a bar to recovery in an action for breach of warranty

4. 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963).

5. Note, *Restricting Disclaimers of the Warranty of Merchantability in Consumer Sales: Proposed Alternatives to the U.C.C.*, 12 WM. & MARY L. REV. 895 (1971).

6. 359 F.2d 822 (7th Cir. 1966)

7. "A manufacturer is not under a duty to make his automobile accident proof or fool-proof Perhaps it would be desirable to require manufacturers to construct

automobile's "intended use" does not include collisions caused by drivers.⁸ This view was rejected by the Eighth Circuit Court of Appeals in *Larsen v. General Motors Corp.*,⁹ wherein it was held that a product's defective design may cause an unreasonable risk to the user and therefore the manufacturer should be liable for resulting injury whether directly caused or merely aggravated by the defect.¹⁰

The question of whether the concept of "intended use" includes foreseeable consequences of unintentional misuse was presented to a Pennsylvania federal district court in *Dyson v. General Motors Corp.*¹¹ The court held that automobile accidents "are so commonplace as to constitute a readily foreseeable misuse of motor vehicles . . ." and that vehicular collisions are "incidental to the normal and intended use of motor vehicles on today's highway."¹² Therefore, the court concluded that a plaintiff who brings himself within the provisions of *Restatement (Second) of Torts* § 402A is entitled to recover even when the case is one of enhanced injury.¹³

The initial problem in *Badorek* was the foreseeability of injuries enhanced by the defective fuel tank.¹⁴ The court agreed with *Dyson* that

automobiles in which it would be safe to collide, but that would be a legislative function, not an aspect of judicial interpretation " *Id.* at 824.

8. "The intended purpose of an automobile does not include its participation in collisions with other objects, despite the manufacturer's ability to foresee the possibility that such collisions may occur." *Id.* at 825. *But see* Judge Kiley's strong dissent, *id.* at 827. Several courts applied the *Evans* rule on principles of negligence rather than the doctrine of strict liability *See, e.g.,* *Schemel v. General Motors Corp.*, 384 F.2d 802, 804 (7th Cir. 1967); *Schumard v. General Motors Corp.*, 270 F Supp. 311, 312-13 (S.D. Ohio 1967); *Willis v. Chrysler Corp.*, 264 F Supp. 1010, 1011 (S.D. Tex. 1967).

9. 391 F.2d 495 (8th Cir. 1968).

10. "No rational basis exists for limiting recovery to situations where a defect in design or manufacture was the causative factor of the accident, as the accident and resulting injury are all foreseeable." *Id.* at 502.

The court apparently accepted the definition of "intended use" as announced in *Spruill v. Boyle-Midway, Inc.*, 308 F.2d 79, 83-84 (4th Cir. 1962).

"Intended use" is but a convenient adaptation of the basic test of "reasonable foreseeability" framed to more specifically fit the factual situations out of which arise questions of a manufacturer's liability for negligence.

However, [the manufacturer] must also be expected to anticipate the environment which is normal for the use of his product and he must anticipate the reasonably foreseeable risks of the use of his product in such an environment.

Id.

11. 298 F Supp. 1064 (E.D. Pa. 1969).

12. *Id.* at 1072-73.

13. *Id.*

14. For a discussion of foreseeability *see* Comment, *Foreseeability In Product Design*

highway accidents are indeed foreseeable and with *Larsen* in allowing recovery by the party whose injuries are aggravated, rather than caused, by a defective product.¹⁵

California courts have long been leaders in the development of products liability law,¹⁶ and the *Badorek* decision blends in with the case law progression by California courts toward maximum consumer protection. *Badorek* represents a logical extension of the strict liability theory in that it affords compensation to consumers for all types of injuries caused by defective products. The *Badorek* court appears to have been well justified in repudiating the unnecessarily narrow view in *Evans* that an automobile's "intended use" does not include collisions. While an automobile manufacturer is not responsible to its customers merely because they are so unfortunate as to be involved in an automobile accident, it is quite a different thing when the hapless victim's automobile becomes a flaming inferno on impact due to a defective design in the gas tank. Certainly, the public is justified in expecting maximum protec-

and Duty to Warn Cases—Distinctions and Misconceptions, 1968 WIS. L. REV. 228. See also, Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363, 370-71 (1965).

15. See 11 Cal. App. 3d 302, 90 Cal. Rptr. 305, 317 (1970) adopting the language in *Larsen v. General Motors Corp.*, 391 F.2d 495, 502 (8th Cir. 1968)

16. See, e.g., *Avner v. Longridge Estates*, 272 Cal. App. 2d 607, 77 Cal. Rptr. 633 (1969) (strict liability applied to cutting, grading, and filling of land); *Elmore v. American Motors Corp.*, 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969) (strict liability applied to an injured bystander); *Seely v. White Motor Co.*, 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965) (strict liability applied to property damage); *Vandermark v. Ford Motor Co.*, 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964) (strict liability applied even though the contract contained a disclaimer clause). See generally, Prosser, *Strict Liability to the Consumer in California*, 18 HASTINGS L.J. 9 (1966); Comment, *Manufacturer's Responsibility for Defective Products*, 54 CALIF. L. REV. 1681 (1966).

The California courts rely heavily on RESTATEMENT (SECOND) OF TORTS § 402A (1965) as a basis for their strict liability decisions:

- (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
 - (a) the seller is engaged in the business of selling such a product, and
 - (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it was sold.
- (2) The rule stated in Subsection (1) applies although
 - (a) the seller has exercised all possible care in the preparation and sale of his product, and
 - (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

tion from these vehicles in the event of an accident, and any judicial precedent which holds that accidents, an extremely grim element of our daily existence, are not "intended uses" of automobiles is unwise and unrealistic. It is hoped that the *Badorek* decision, by virtue of its origin in the California courts, will serve as a ballast to the *Larsen* view and will mark a distinct turn against unreasonable refusals to extend the doctrine of strict liability in tort.

DANIEL J. PERRY

Securities Regulation—APPLICATION OF SECTION 16(b)—BENEFICIAL OWNERSHIP LIABILITY FOR SHORT-SWING PROFITS. *Emerson Electric Co. v. Reliance Electric Co.*, 434 F.2d 918 (8th Cir. 1970).

Emerson Electric Company, which owned no stock in the target corporation, acquired more than ten percent of Dodge Manufacturing Corporation's stock on June 16, 1967.¹ When its merger efforts failed, Emerson reduced its Dodge holding to less than ten percent. On September 11, 1967, after Dodge had merged with Reliance Electric Company, Emerson sold the remaining shares to Reliance.² Emerson instituted a declaratory judgment action to determine its liability under section 16(b) of the Securities Exchange Act of 1934³ for the profits realized from these two sales.

1. *Emerson Electric Co. v. Reliance Electric Co.*, 434 F.2d 918 (8th Cir. 1970). Emerson purchased 13.2 percent of Dodge's outstanding stock, a total of 152,282 shares, at \$63 per share. *Id.* at 920.

2. By the first sale Emerson reduced its holding to 9.96 percent. This sale of 37,000 shares was made on August 28, 1967, at \$68 per share. In the second sale which was completed on September 11, 1967, Reliance paid Emerson \$69 per share for the remaining 115,282 shares. *Id.* at 920.

3. Securities Exchange Act of 1934 § 16(b), 15 U.S.C. § 78p(b) (1964).

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or if not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after